

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 840 (Delegate Stein)
 Environment and Transportation

Environment - On-Site Wastewater Services - Regulation

This bill establishes the State Board of On-Site Wastewater Professionals within the Maryland Department of the Environment (MDE) to regulate individuals who perform on-site wastewater services in the State and establish specified standards for certain “on-site wastewater systems” (OSWS). The board must set fees and adopt implementing regulations. Counties must enforce minimum standards for OSWS, as specified. A person cannot perform on-site wastewater services unless licensed by the board. The bill establishes criminal and civil penalties for individuals who violate the bill’s provisions.

Fiscal Summary

State Effect: General fund expenditures increase by \$1.1 million in FY 2020 for staff and licensing costs; out-years reflect annualization and termination of contractual staff. General fund revenues likely increase correspondingly beginning in FY 2020 from license fees. Potential increase in general fund revenues and expenditures due to the bill’s penalty provisions.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
GF Revenue	-	-	-	-	-
GF Expenditure	\$1,092,600	\$202,700	\$147,000	\$151,900	\$157,000
Net Effect	(-)	(-)	(-)	(-)	(-)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Potential significant operational and fiscal impact on local governments from the bill’s licensing and enforcement requirements. Potential minimal increase in revenues and expenditures due to the bill’s penalty provisions. **The bill may impose a mandate on a unit of local government.**

Small Business Effect: Meaningful.

Analysis

Bill Summary: “On-site wastewater services” means any activity associated with the design, installation, operation and maintenance, pumping or repair of an on-site wastewater system. “On-site wastewater system” means a system designed to treat and dispose of effluent on the same property that produces the wastewater, and includes a septic or other on-site sewage disposal system.

State Board of On-Site Wastewater Professionals

The board consists of nine members appointed by the Governor, with the advice of the Secretary of the Environment, and with the advice and consent of the Senate. Seven members must be on-site wastewater professionals, as specified, and two must be consumer members. Each board member is entitled to reimbursement for expenses under the standard State travel regulations, as provided in the State budget. The board may employ a staff in accordance with the State budget.

Required Regulations, Enforcement, and Fees

The board must adopt regulations that establish (1) licensing procedures and qualifications for specified categories (master installer and journey installer, master inspector and journey inspector, master pumper and journey pumper; and master operation and maintenance provider and journey operation and maintenance provider); (2) certification procedures and qualifications for specified categories (designer, advanced treatment installer, mound installer, drip dispersal installer, pump dispersal system installer, advanced treatment operation and maintenance provider, advanced treatment unit pumper, and any other category associated with a specific on-site wastewater treatment technology); and (3) licensing procedures and qualifications for issuing initial licenses to individuals who, as of January 1, 2019, perform on-site wastewater services in the State.

The regulations must also establish minimum standards related to the design, installation, operation, and maintenance of an OSWS with a design flow of less than 5,000 gallons per day. Counties must either enforce these minimum standards or adopt and enforce standards that meet or exceed the minimum standards adopted by the board.

The board must set reasonable fees for the issuance and renewal of licenses and for other board-provided services. Fees collected are deposited into the general fund.

License Required

Before performing on-site wastewater services in the State, a person must be licensed. To qualify, an applicant must meet requirements established by board regulations, submit an application, and pay an application fee.

Prohibited Acts and Penalties

The bill establishes grounds for denying a license application, reprimanding a licensee, and suspending or revoking a license. The bill also establishes hearing provisions and authorizes an individual aggrieved by a board decision in a contested case to take a specified appeal.

A person who violates any of the bill's provisions or board regulations is guilty of a misdemeanor and on conviction is subject to a fine of up to \$10,000 and/or imprisonment for up to one year. Each day that a person performs on-site wastewater services without a license is a separate offense. A person may also be subject to a civil action and a civil penalty of up to \$10,000 for each violation. Any penalties collected are distributed to the general fund.

Current Law/Background:

Septic System Inspectors

All individuals performing inspections of septic systems for property transfers must complete an MDE-approved course in the proper inspection of septic systems and certify to MDE that the course was completed. Inspectors must also make evidence of course completion available to their customers.

The required septic system inspector course is a one-time course. MDE's Onsite Systems Division offers the free, but required, training for septic system inspectors between 6 and 15 times annually. MDE maintains a list of trained inspectors on its website.

State Board of Environmental Health Specialists

Many septic system inspectors are already licensed by the State Board of Environmental Health Specialists (BEHS) in the Maryland Department of Health. Local health departments (LHDs) are one of the primary sources of septic system inspectors in the State, and inspectors employed by LHDs are environmental health specialists licensed by BEHS. Licensure by BEHS as an environmental health specialist requires applicants to meet minimum education and training requirements. If an applicant meets one of the statutory combinations of required education and experience, the applicant is eligible to take the

qualifying exam. If the applicant passes the exam and pays the requisite fees, the board issues the applicant a license. The board may waive the exam requirement under specified circumstances. The initial license fee is \$75. Examination fees are established by the examination service, and the current fee is \$125. There are ongoing continuing education requirements, and licensees must renew their license every two years. The biennial renewal fee is \$200. A number of current BEHS-approved continuing education courses involve training specific to septic system inspections.

The Department of Legislative Services (DLS) notes that, according to survey results from a sunset evaluation of BEHS in 2015, a large number of licensed environmental health specialists also hold a credential from the National Environmental Health Association (NEHA). The registered environmental health specialist/registered sanitarian credential issued by NEHA is recognized throughout the country.

Septic System Installers

Although there is no generic septic system construction or installation certification, MDE offers training and certification for the installation of different types of specialized septic systems throughout the year. Currently, these offerings include training for sand mound construction (and a refresher course), at-grade mound construction, the installation of systems with best available technology (BAT) for the removal of nitrogen, and BAT operation and maintenance. MDE advises that more than 2,500 contractors hold a certification for one or all of these trainings. Current regulations require certification prior to installing a sand mound system, at-grade system, or a BAT system. BAT septic system service providers must also be certified.

MDE notes that several, but not all, counties already license the installation of septic systems. For example, the Frederick County Health Department requires a license prior to installing a septic system. The county also licenses sewage disposal contractors, although the license only requires that the contractor have a driver's license and pay a fee. The county notes that master plumbers already qualify for the county sewage disposal contractor license.

State Board of Waterworks and Waste Systems Operators

MDE advises that some of the individuals that need a license under the bill are already licensed by the State Board of Waterworks and Waste Systems Operators. This board protects the quality of water and public health by ensuring that operators and superintendents meet minimum professional standards. An operator of a waterworks participates in the control of the flow, processing, and distribution of water, and an operator of a wastewater works participates in the collection, control of flow, processing, and discharge of wastewater and effluent. Waterworks operators treat water so that it is safe to

drink, and waste systems operators remove harmful pollutants from domestic and industrial waste so that it is safe to return to the environment. A superintendent is certified as the individual who is in charge at either type of facility.

Permit Required to Construct or Alter On-site Sewage Disposal Systems

Pursuant to current regulations, a person may not construct or attempt to construct a septic system without first obtaining a permit from the appropriate approving authority. A person also may not alter a septic system or cause it to receive any increase in flow or change in the character of wastewater unless permitted. A person must obtain an appropriate septic system permit, well construction permit, public or private water supply system permit, or public or private sewerage permit before constructing or altering any structure, residence, floating home, or commercial establishment that is served or planned to be served by a septic system or a private water supply system.

An approving authority must consider specific site evaluation criteria when determining whether to approve a lot or parcel for a septic system. In most cases, local requirements are the same as those outlined in State regulations; however, a county with delegated authority may choose to impose more stringent requirements than the State. Current regulations contain specific technical design and construction requirements for conventional septic systems based on the use of a property, wastewater design flow, and site characteristics such as topography, geology, hydrology, soil descriptions, and soil permeability.

Delegation of Approval Authority

MDE delegates the authority to issue permits to construct and repair conventional septic systems to local approving authorities. Nonconventional septic systems are required when the specific site characteristics mean that a conventional septic system, if installed, would not meet requirements for the protection of groundwater and public health. MDE must review applications for any nonconventional system, jointly, with the local approving authority.

As with new construction, a local approving authority may only permit the repair or replacement of a *conventional* septic system. The local approving authority makes the initial determination as to whether a conventional system is sufficient for repair or replacement based on the site. If a conventional system is insufficient, and a nonconventional system is required, MDE must be involved and must approve the final permit.

Local approving authorities conduct inspections, and the employees that conduct these inspections are licensed environmental health specialists, as noted above.

State Fiscal Effect: Prior to the new board becoming operational, several actions must occur: board members must be identified, nominated, and appointed; board staff must be hired; and numerous regulations regarding licensing and certification qualifications and procedures must be adopted. DLS notes that the bill does not provide a delayed effective date for the licensure requirement; therefore, MDE must establish the board and begin issuing licenses immediately upon the bill's October 1, 2019 effective date. As this is not feasible, DLS assumes that licenses are issued as soon as possible, though not likely prior to April 1, 2020, at the earliest.

Maryland Department of the Environment Administrative Costs

General fund expenditures increase by \$1,092,642 in fiscal 2020, which accounts for the bill's October 1, 2019 effective date. This estimate reflects the cost of hiring two full-time, permanent staff (one administrator and one administrative officer), and six full-time contractual administrators to develop regulations, conduct trainings, administer examinations, and license and certify on-site wastewater service professionals as required under the bill. It includes salaries, fringe benefits, one-time start-up costs (including training materials for licensees), and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- MDE advises that there are approximately 6,000 individuals in the State who must be licensed under the bill;
- as the bill establishes criminal penalties for anyone performing, attempting to perform, or offering to perform on-site wastewater services unless licensed by the board, effective October 1, 2019, the board must license all 6,000 individuals as soon as possible and at least within one year;
- MDE must purchase training, testing, and license materials up front for applicants at a cost of \$125 per person; and
- MDE's Onsite Systems Division is currently staffed by four individuals, and the bill's requirements significantly increase the scope of the certification and training programs offered; thus, MDE cannot absorb the additional workload resulting from the bill.

	<u>FY 2020</u>	<u>FY 2021</u>
Permanent Positions	2	0
Contractual Positions	6	-6
Salaries and Fringe Benefits	\$293,188	\$197,241
Training Materials	750,000	0
Other Operating Expenses	<u>49,454</u>	<u>5,466</u>
Total FY 2020 State Expenditures	\$1,092,642	\$202,707

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses. It also reflects termination of the six contractual administrators in fiscal 2021 after the initial licenses are issued.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

DLS notes that this estimate does not include training and license material costs in the out-years. DLS also advises that it is not clear whether MDE can actually license all 6,000 on-site wastewater service professionals within the first year. Establishing a board, developing regulations, and licensing a significant number of individuals within one year will be challenging, even with additional staff.

General Fund Revenues From License Fees

The bill requires the board to set reasonable fees for the issuance and renewal of licenses and other services the board provides at a level to *approximate* the costs of maintaining the board. Fees accrue to the general fund. As noted above, MDE advises that approximately 6,000 individuals must be licensed under the bill. The terms of licenses, examination requirements, testing requirements, and actual license fees will depend on board regulations. General fund revenues increase beginning in fiscal 2020. Based on the estimated number of licensees and the estimated costs to maintain the board (discussed above), the initial license fee would need to be set at \$190, with a \$25 annual renewal fee. Alternatively, the general fund could recover funding over several years with a lower initial license fee and a higher renewal fee.

General fund revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the District Court.

State Impact from New Penalty Provisions

General fund expenditures increase minimally as a result of the bill's incarceration penalties due to more people being committed to State correctional facilities for convictions in Baltimore City. The number of people convicted of this proposed crime is expected to be minimal. Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

The Office of the Public Defender may have to provide representation for additional individuals as a result of the bill's penalty provisions. However, the impact of any increased

workload is unknown, because it depends on the number of cases that result from the bill's changes. The Maryland State Commission on Criminal Sentencing Policy can review the new offense and adopt a seriousness category classification within sentencing guidelines with existing budgeted staff and resources.

Local Revenues: Revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Under the bill, counties must adopt and enforce the regulations and standards established by the board or, alternatively, adopt and enforce their own standards that meet or exceed those adopted by the board. It is unknown how the regulations and standards adopted by the board align with current practices regarding septic systems and other on-site wastewater services. However, this requirement may result in an increase in local expenditures and workloads.

LHDs and approving authorities employ licensed environmental health specialists who conduct septic system inspections, among other duties. Under the bill, these individuals must also obtain a new license from the board. To the extent that local government employers cover employee license fees, expenditures increase. DLS notes that most, if not all, of these employees already pay license fees and are responsible for continuing education requirements from BEHS. Further, many pay fees for national credentials as well.

Additionally, even if the new board is able to license all on-site wastewater service professionals within one year, there is likely a period of time during which LHDs cannot deploy septic system installers and other affected employees to conduct their jobs. This will create operational problems for LHDs and may affect public health.

Expenditures increase, likely minimally, as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.

DLS also notes that during a 2015 sunset evaluation of BEHS, recruitment and retention of qualified environmental health specialists was an ongoing concern that was also noted during 2009 and 2011 sunset evaluations. This was largely attributed to pending retirements, difficulty recruiting new applicants and retaining qualified professionals due to stringent educational and experience requirements, low entry-level wages, the lack of opportunities for advancements within small LHDs, and budget constraints.

Small Business Effect: The bill has a significant operational and economic impact on small businesses that provide on-site wastewater services. As noted above, even if the new

board is able to license all on-site wastewater service professionals within one year, the bill prohibits provision of on-site wastewater services without licensure from the board as of October 1, 2019. Therefore, small businesses that provide on-site wastewater services may be prohibited from operating for up to one year (while the board is formed and the licensure process put in place) without facing potential civil and criminal penalties.

Further, expenditures increase for small businesses that conduct septic system inspections and install septic systems to pay application license fees, attend training, take licensing examinations, or meet other requirements established by the board. Under current law, septic system inspectors are only required to take a one-time free course for certification. Septic system installers may have already obtained certifications in installing specific types of systems, but there are no general licensing requirements. Further, some of these individuals may already be licensed by another board.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Harford and Montgomery counties; City of College Park; Maryland Municipal League; Governor's Office; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Maryland Department of the Environment; Office of Administrative Hearings; Department of Legislative Services

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